after which it becomes absolute.[22] For the administration of the acts, existing judicial machinery has generally been utilized, though Massachusetts has for nearly twenty years maintained a special land court.[23]

With regard to the assurance fund provisions, however, there is considerable divergence among the American acts. The ideal situation is to have the state, which guarantees the title and cuts off claims by constructive notice and an arbitrary period of limitation, also stand ready absolutely to indemnify claimants injured by mistakes of its officers. But only about half the states in which Torrens acts are in force have adopted this principle;[24] in the others, as well as under the Model Act, neither state nor county stand back of the assurance fund, and if the amount accumulated proves insufficient to satisfy judgments, the claimant must be content with collecting principal and interest from moneys subsequently accruing to the fund.[25]

Torrens titles, owing to their security and consequent ready marketability, are becoming increasingly popular; and it seems only a question of time before registration of title will not only be encouraged by law in all American jurisdictions, but will become so nearly universal that the total abolition of the cumbersome recording system will be seriously contemplated. It must be admitted, however, that the greater initial cost of Torrens registration constitutes a serious barrier to its voluntary adoption which even the tremendously greater cheapness and facility of subsequent transactions do not wholly remove;[26] and on the remedying of this and other defects in the administrative provisions of existing laws the friends of the system would do well to concentrate their efforts.[27]

GOVERNMENT REGULATION OF PRIVATE SHIPPING.—The recent Shipping Board Act,[1] besides providing for a merchant marine owned or controlled by the government, attempts for the first time the regulation of private shipping in respect to rates and practices. This feature of the Act has attracted comparatively little attention considering the important results which it seeks to accomplish. Previous to this

[22]See *e. g.*, Colo. act, § 886; Hawaiian act § 3170; Ill. act, § 69; Minn. act, § 6893; Neb. act, § 26; Wash. act, § 8836.

[23]Mass. act, § 1 *et seq.*, and amendments. Similar provisions are found in Hawaii and the Philippines. Hawaiian act, § 3133 *et seq.*; Philippine act, § 1 *et seq.* Sir Robert Torrens considered the expense of a special court unnecessary, and advocated reference of registration questions to the regular tribunals. Torrens, *op. cit.* 20. Unless the special court can also be local, the delay, expense, and inconvenience render it undesirable. Niblack, *op. cit.* § 29.

[24]See, *e. g.*, Mass. act, § 98; No. Car. act, § 36; So. Car. act, § 36.

[25]See, *e. g.*, Minn. act, § 6944; Ohio act, § 8572-107; Va. act, § 87; model act, § 87.

[26]Nebraska pamphlet (see foot-note 8), pp. 39-48.

[27]Pending New York amendments seek (1) to simplify court procedure, shortening the time and reducing the initial cost; (2) make searching and examination of titles exclusively official; (3) place the state or county back of the assurance fund. Hopper, *op. cit.* 59.

[1]Pub. Laws, 64th Congr., 1st Sess., c. 451, p. 728.

statute there was no such regulation. The Harter Act,[2] however, regulates the limitation of liability of carriers by water in certain respects, and also the issuance by them of bills of lading. The Interstate Commerce Act is applicable only where the carriage by water is a part of a continuous transportation or shipment by rail and water.[3] Foreign countries have not passed any general laws on the subject, what legislation there is having been enacted as auxiliary to the establishment of shipping subsidies, or to meet conditions arising out of the present war.[4]

The statute under consideration applies to all common carriers by water engaged in interstate or foreign commerce except ferry boats[5] and ocean tramps.[6] In its regulatory provisions, however, it carefully distinguishes vessels engaged in interstate and in foreign commerce. Broadly speaking, the sections of the act other than those conferring power on the Board to regulate rates, apply equally to both classes of carriers. Vessels engaged in foreign commerce are not regulated as to the rates they may charge except that they are forbidden to discriminate against individual shippers or against American shippers in favor of their foreign competitors;[7] while those engaged in interstate commerce are required to file their rates with the Shipping Board, which has a discretionary power of revision.[8] These rates the carrier may reduce but may not increase without permission.[9] Fundamental differences between transportation conditions on land and on sea make it impracticable in the latter case to do anything more than establish maximum rates; for, while railroads may in a large measure adjust the supply of facilities to the demand for transportation, vessels, having secured a major part of their cargo, are frequently forced to accept other shipments on what terms they can obtain.

Certain provisions of the act require particular consideration. Perhaps the most important of these is § 15, which exempts from the operation of the anti-trust laws pooling, rate, and other co-operative agreements, which have been filed with and approved by the Board. There is no similar provision in the Interstate Commerce Act. Its inclusion in the present statute, therefore, seems to give legislative sanction to the recent tendency of the courts to permit reasonable restraints on free competition, in the interest of greater efficiency in

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[2] 7 U. S. Comp. Stat. (1916) § 8029 *et seq.*, 27 Stat. 445.

[3] See Ex parte Koehler (1887) 30 Fed. 862.

[4] See remarks of Senator Fletcher, Congressional Record, Vol. 53, p. 12363.

[5] For the present status of interstate ferry-boats, see N. Y. Cent. R. R. *v.* Hudson County (1913) 227 U. S. 248, 33 Sup. Ct. 269.

[6] Ocean tramps, most of which operate under special contracts, are not, properly speaking, common carriers, but bailees for hire; but they were expressly excluded from the terms of the act, to avoid any doubt as to their status. See remarks of Representative Alexander, Congr. Record, Vol. 53, p. 8078.

[7] § 17.

[8] § 18.

[9] See remarks of Senator Fletcher, *op. cit.* p. 12552.

the management of important industries.[10] On the other hand, an attempt has been made to protect not only the interest of shippers, but also those of small independent carriers by water. Among the methods of unfair competition which the act specifically prohibits, are the use of "deferred rebates",[11] "fighting ships",[12] retaliatory tactics against shippers who patronize other lines, and the influencing of insurance companies to give preferential rates. The existence and wide extent of these evil practices have long been recognized, and the interest of the public in checking them is obvious.[13]

The procedural and remedial sections of the act are practically identical with those of the Interstate Commerce Act; but in the grouping together of these provisions the newer statute has effected a decided improvement. The sections dealing with the jurisdiction of the federal courts have been simplified, and the power of the Shipping Board to take testimony has been expressly limited to cases of alleged violations of the act.[14] The election which the aggrieved shipper had under the Interstate Commerce Act, to present his claim either to the courts or to the Commission, has not been preserved in the present statute, the Shipping Board being given exclusive original jurisdiction.[15] This procedure will tend to simplify the interpretation and administration of the act. Finally, a very drastic method of enforcement is provided in § 36 which gives to the Secretary of the Treasury the power to refuse clearance to vessels violating the provisions of the act.

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[10]The power of the railroads to make such arrangements was denied in the Trans-Missouri Freight Case (1896) 166 U. S. 290, 17 Sup. Ct. 540. But the reasoning of such cases as Standard Oil *v.* U. S. (1910) 221 U. S. 1, 31 Sup. Ct. 502, indicates that a more liberal policy might prevail to-day.

[11]A method by which the company in return for all the business of the shipper over a specified period of time agrees to return a portion of the charges at the expiration of the next succeeding period. The arrangement is open to all shippers who care to enter into it, and unlike the railroad rebate is aimed against the rival carrier rather than against individual shippers.

[12]This practice consists in employing one ship of the line to compete with the rival for the purpose of driving him out. The prohibition of these practices must be based on considerations of public policy, since they are not illegal at common law. Mogul Steamship Co. v. McGregor [1892] A. C. 25.

[13]The House Committee on Merchant Marine of the 63rd. Congress made an exhaustive investigation of shipping conditions on the results of which the provisions of the present bill were based.

[14]The power of the Interstate Commerce Commission is in terms broader than that of the Shipping Board but was greatly restricted by the case of Harriman *v.* Interstate Commerce Commission (1908) 211 U. S. 407, 29 Sup. Ct. 115.

[15]§ 22. The shipper's election under the Interstate Commerce Act has been construed away by the courts. 17 Columbia Law Rev. 34.